



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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August 11, 2014

BY ECF

The Honorable Analisa Torres
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *New York Times Company v. U.S. Department of Justice,*
14 Civ. 3776 (AT)

Dear Judge Torres:

We write respectfully on behalf of both parties in the above-referenced action, which is brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), in advance of the initial pretrial conference, which is scheduled for 4:15 p.m. on August 13, 2014. As discussed below, the government respectfully requests that the Court adjourn the upcoming conference until the week of August 25, 2014 or thereafter, on a date convenient for the Court. The plaintiff consents to this request.

The parties provide this joint letter in accordance with the Court’s Order, dated July 31, 2014. Because this is an action brought pursuant to FOIA, we understand Local Civil Rule 16.1 to exempt it from the requirement of a mandatory scheduling order contained in Fed. R. Civ. P. 16(b). Moreover, the parties contemplate that the traditional case management structure set forth in the Court’s template Civil Case Management Plan and Scheduling Order is not necessary in this case, because we expect that this matter, like most FOIA matters, will be resolved on cross-motions for summary judgment without the need for discovery.¹

Pursuant to the FOIA, plaintiffs seek seven classified reports issued by the Office of the Inspector General of the Department of Justice (“OIG”) relating to the now-defunct President’s Surveillance Program (the “Joint IG Report”) and as well as other “surveillance and data collection” (the “OIG Surveillance Reports”). See Complaint ¶¶ 9, 26. The parties have met and conferred regarding the government’s review and processing of these seven reports, in order to determine whether the reports, or any portions thereof, may be released or are exempt from disclosure pursuant to FOIA exemptions. The government anticipates that some or all of the

¹ One issue that the Court’s Civil Case Management Plan and Scheduling Order addresses that does not relate to a schedule for discovery is whether the parties consent to conducting all further proceedings before a United States Magistrate Judge. The parties do not consent to conducting all further proceedings before a United States Magistrate Judge.

information in the reports is exempt from disclosure pursuant to, *inter alia*, FOIA Exemption 1, 5 U.S.C. § 552(b)(1), which allows the government to withhold information that is currently and properly classified pursuant to Executive Order in the interests of national security. It is possible, however, that some of the reports contain information that has been declassified by the Director of National Security within the past year and therefore may be subject to release. The review process will require that all of the reports be reviewed by an original classification authority. In addition, many of these reports will need to be reviewed by multiple agencies within the United States intelligence community.

As explained in the parties' letter to the Court dated July 31, 2014, the government is in the process of determining a proposed schedule for reviewing the reports. Although the government had anticipated being able to provide a complete schedule today, certain issues regarding the proposed schedule remain outstanding. At present, the government has determined that it anticipates being able to complete the review and processing of the Joint IG Report within 180 days, and the OIG Surveillance Reports within 120 days. However, the government anticipates that it will not require a full 120 days to complete its review and processing of all six OIG Surveillance Reports. Accordingly, with the consent of the plaintiffs, the government proposes to adjourn the upcoming conference until the week of August 25, 2014 or thereafter, on a date convenient for the Court. By August 25, 2014, the government will propose to plaintiffs a schedule for completion of the processing of the six OIG Surveillance Reports on a rolling basis, together with a proposed final schedule for processing of all seven reports.

With respect to potential briefing on the merits, in the absence of settlement, FOIA cases are generally determined on cross-motions for summary judgment. Once the government has completed its review and processing of the six OIG Surveillance Reports and the Joint IG Report, the parties will meet and confer to determine what withholdings, if any, plaintiffs intend to challenge. To the extent the parties are unable to settle and summary judgment motions are therefore necessary, the parties will submit a request for a pre-motion conference in accordance with the Court's individual practices within 14 days of the government's completion of its review and processing of the Joint IG Report.

Thank you for consideration of this letter.

Respectfully,

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United States Attorney

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